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10/735,203	12/12/2003	Lawrence W. Cosenza	DSI-10402/22	2593

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EXAMINER

ART UNIT

PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.

ATTACHMENT

10. CONT. The Appeal Brief filed on 5/27/08 lists the reference Lugli et al. (2004) Molecule & Biochemical Parasitology, V. 138, 9-20, as the sole piece of evidence relied upon by appellants in their Brief. However, a copy of the Lugli et al. reference is not part of the Brief, nor is there any statement as to when this reference was made of record in the instant application.

In fact, this reference has never been provided for the examiner's consideration or been made of record. The appellant first referred to this publication in their remarks submitted on 3/6/07 in response to the non-final action of 12/8/06. In the Final office action mailed 8/24/07, the examiner indicated that the Lugli reference was not considered as it had not been provided or made of record. The appellants referred again to the Lugli reference in their amendment after final rejection submitted on 12/21/07. In the Advisory Action mailed on 2/29/08, the examiner points out that the Lugli reference is still not of record.

Reference to unentered evidence is not permitted in an appeal brief. MPEP 1205.02 (ix). Therefore, appellant may not cite Lugli et al. as evidence in the appeal brief.

It is further noted that the appellant cites numerous references in their argument section which are not listed in the evidence section and for which no copies have been provided as required, see MPEP 1205.02 specifically states, “[i]f in his or her brief, appellant relies on some reference, he or she is expected to provide the Board with a copy of it in the evidence appendix of the brief”. Some of the references cited in the arguments section are indicated as “incorporated by reference” in the specification. However, unless copies of such references have been specifically provided to the office in an IDS or provided elsewhere as evidence, they are not

considered to be of record in the instant application. Other references have simply been cited without any indication whether they are new or have been previously submitted in the IDS of 5/4/05. In particular, the appellant cites Hagar et al. (1997) Nature, V. 385, 823-826 which has never been previously discussed and is not of record. Again, as noted above, reference to unentered evidence is not permitted in an appeal brief. MPEP 1205.02 (ix).

Therefore, for the reasons set forth above, the appeal brief does not comply with 37 CFR 41.37.

Any inquiry concerning this communication from the examiner should be directed to Anne Marie S. Wehbbé, Ph.D., whose telephone number is (571) 272-0737. If the examiner is not available, the examiner's supervisor, Joseph Woitach, can be reached at (571) 272-0739. For all official communications, the new technology center fax number is (571) 273-8300. Please note that all official communications and responses sent by fax must be directed to the technology center fax number. For informal, non-official communications only, the examiner's direct fax number is (571) 273-0737. For any inquiry of a general nature, please call (571) 272-0547.

The applicant can also consult the USPTO's Patent Application Information Retrieval system (PAIR) on the internet for patent application status and history information, and for electronic images of applications. For questions or problems related to PAIR, please call the USPTO Patent Electronic Business Center (Patent EBC) toll free at 1-866-217-9197. Representatives are available daily from 6am to midnight (EST). When calling please have your application serial number or patent number available. For all other customer support, please call the USPTO call center (UCC) at 1-800-786-9199.

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